

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re application of)
)
WORLDCOM, INC , and its Subsidiaries as)
DEBTOR IN POSSESSION)
Transferor)
)
AND)
)
MCI, INC , and its Subsidiaries)
Transferee)
)
For consent to transfer of control of licenses and)
authorizations held by WorldCom in bankruptcy)

WC Docket 02-215

To The Commission

SIXTH SUPPLEMENT TO
PETITION TO DENY TRANSFER OF LICENSES,
AUTHORIZATIONS, AND CERTIFICATIONS
OF WORLDCOM, INC.

Margaret F Snyder, by her attorneys, hereby supplements her petition to deny the above referenced applications for transfer of control of WorldCom, Inc.'s ("WorldCom") licenses, authorizations and certifications

On October 3, 2003, Verizon Communications, Inc. ("Verizon") filed a letter seeking approval of a settlement agreement with WorldCom, and requesting that the Commission treat the settlement agreement as a confidential document exempt from public disclosure. Also on October 3, 2003, SBC Telecommunications, Inc. ("SBC"), filed a letter along with a "Request for Permission to Withdraw an Opposition Not Asserted." BellSouth Telecommunications, Inc. ("BellSouth"), on September 30, 2003

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filed a “Motion for Approval” seeking approval from refraining from filing an opposition to the above captioned applications. BellSouth, Verizon and SBC are referred to herein as the “RBOC Parties.” The RBOC Parties requested that their settlement agreements and certifications be accorded confidential treatment and withheld from public inspection. On October 6, 2003, WorldCom filed a letter transmitting the certification called for under 47 C.F.R. §1.935(b) in connection with the Settlement Agreement WorldCom executed with BellSouth. WorldCom also requested that the certification be accorded confidential treatment and withheld from public inspection. On October 9, 2003 WorldCom filed with the FCC two additional letters in connection with its settlement agreements with Verizon and SBC. Again, WorldCom requested that the certifications be accorded confidential treatment and withheld from public view. Though no *ex parte* notice was provided,¹ apparently these settlement agreements and associated certifications were filed at the request of the Commission.

On October 15, 2003 Ms. Snyder filed her Fourth Supplement to Petition to Deny Transfer of Licenses Authorization, and Certifications of WorldCom, Inc. (“Fourth Supplement”). In her Fourth Supplement Ms. Snyder argued that WorldCom violated Section 1.935 of the Commission’s Rules by entering into unapproved settlement agreements. As Ms. Snyder stated in her Fourth Supplement,

Ms. Snyder, as a member of the public, and a party to this proceeding has a right to review the withheld documents. There is no public interest reason for the Commission to permit these carriers to withhold documents from public scrutiny. Billions of dollars were lost by investors because decisions were taken in secrecy by WorldCom’s management. The public has a right to review the terms and conditions of the documents on which the settlement

¹ See, 47 C.F.R. §1.206(b)(2)

was based SBC. Verizon and BellSouth actively compete against WorldCom. They may have information relevant to the Commission's review of WorldCom's qualifications to remain a Commission licensee. To withhold this information in exchange for financial consideration is unconscionable and a violation of the Commission's Rules and policies.

On November 4, 2003, the Wireless Telecommunications Bureau ("WTB") issued a *Protective Order*, which, while denying the public and Ms. Snyder access to the settlement agreements and certifications, granted Ms. Snyder's counsel the right to copy and review the settlement agreements and certifications. SBC appealed the decision and on November 21, 2003, the WTB modified the *Protective Order* by barring counsel for Ms. Snyder from copying the SBC Settlement Agreement.² Counsel for Ms. Snyder was permitted to review the SBC Settlement Agreement at the offices of the FCC and was further permitted to take notes and to quote, under seal, from the SBC Settlement Agreement and accompanying declaration.

The SBC Settlement Agreement, the Verizon Settlement Agreement and the BellSouth Settlement Agreement all contain essentially the same provisions of relevance to this pleading

BellSouth Settlement Agreement.

[REDACTED]

² Order, DA 03-3745, released November 21, 2003

³ BellSouth Settlement Agreement, p. 1

Prior FCC approval is not required for the Verizon Settlement Agreement to

Settlement Agreement to take effect

Prior FCC approval is not required for the BellSouth

SBC Settlement Agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Prior FCC approval is not required for the SBC Settlement Agreement to take effect

Section 1 935 provides, in pertinent part, “Parties that have filed or threatened to file a petition to deny, informal objection or other pleading against an application and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the Commission ” Section 1 935(c) provides that “No person shall make or receive any payments in exchange for withdrawing a threat to file or refrain from filing a petition to deny, informal objection, or any other pleading against an application.”

The RBOC Parties in exchange for monetary consideration have agreed not to file a petition to deny or other pleading against the proposed transfer of WorldCom licenses and authorizations. Each of the settlement agreements specifically bars them filing any objection or petition in this proceeding The Affidavit of Mary Jo Peed, General Counsel

⁶ Verizon Settlement Agreement, Section 5 3

of BellSouth, includes the following statement, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SBC's November 13, 2003, publicly filed letter, states that the Settlement Agreement provides for a "substantial monetary recovery on SBC's claims." This, according to SBC "may be misconstrued by other creditors of WorldCom." Clearly, consideration was paid in return for RBOC Parties' promises not to file a Petition to Deny in the above referenced proceeding, or otherwise opposing WorldCom's attempts to transfer control of its licenses and authorizations from its pre-bankruptcy entity to its post-bankruptcy entity. This explains why the RBOC Parties were able to get a substantial monetary recovery that may be "misconstrued" by other creditors. While the exact dollar amount paid for the silence of the RBOC Parties is not explicit, there can be no doubt that the RBOC Parties were well paid for their silence and cooperation.

The declaration of John H. Atterbury, SBC's Group Vice President is instructive. Therein he states [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Atterbury's declaration falls far short of the requirements of Section 1.935(b)(1) which calls for an affidavit specifically stating that WorldCom has not paid SBC any money or other consideration in excess of SBC's legitimate and prudent expenses. The declarations of Verizon and BellSouth likewise, in essence, claim that they were paid no

more than what they were owed. This, however, is a bankruptcy case and the question is not what the RBOC Parties were owed, but rather what were they entitled to receive in the bankruptcy proceeding. There is a simple formula that can be applied to provide a working estimate of what RBOC Parties were entitled to obtain in the bankruptcy proceeding. The Commission should take the funds received and to be received by the RBOC Parties and multiply that by the percentage that other creditors of WorldCom received. Published reports indicate that WorldCom's bondholders will receive 36 cents on the dollar, other unsecured creditors will receive less. [REDACTED]

[REDACTED]

[REDACTED] Applying this formula, if WorldCom bondholders received 36% of their total claims, the RBOC Parties should have received 36% or less of their claims. Under that hypothesis, any amount over 36% is the amount that the RBOC Parties received for their silence in clear and blatant violation of Section 1.935 of the Commission's Rules.

Further evidence that RBOC Parties were paid for their silence can be found in the timing of the settlement agreements. On July 9, 2003 the FCC issued a Public Notice establishing the pleading cycle in this proceeding. Petitions to Deny were due August 8, 2003. Each of the RBOC Parties' settlement agreements was executed after the date of the Public Notice, but before the date for filing Petitions to Deny. Each of the settlement agreements contains a provision specifically barring the RBOC Parties from filing a petition or objection in this proceeding.

The settlement agreements, though executed in July 2003, were belatedly filed in October 2003 with the Commission, after the Bankruptcy Court approved them. There is no provision in any of the RBOC Parties' settlement agreements requiring prior approval

of the FCC as required by Section 1.935 of the Commission's Rules. There was no reason to include such a provision since the Commission cannot approve what is already a done deal

In an all too familiar pattern of conduct, WorldCom paid the RBOC Parties for their silence. The RBOC Parties received "substantial monetary recover[ies]" in return for their signed agreements not to challenge WorldCom's qualification to remain an FCC Licensee. Simply stated, WorldCom has perpetrated yet another fraud on the FCC and WorldCom's legitimate creditors. WorldCom's conduct has undermined the FCC's ability to perform its regulatory mission.

It is not just that WorldCom violated Section 1.935 of the Commission's Rules. The RBOC Parties are WorldCom's closest competitors. WorldCom and the RBOC Parties have interlocking relationship through which they provide services and furnish facilities to one another, including various interconnection agreements, arrangements provided under tariff, contracts providing for volume discounts and billing and collection arrangements. Who better than the RBOC Parties to provide the Commission with relevant information concerning WorldCom's past and present business practices,, as well as WorldCom's past and present violations of the Commission's rules and regulations? It is just this type of information that WorldCom sought to have concealed from the FCC. Threatened with exposure and the possible loss of all its licenses WorldCom paid the RBOC Parties for their silence. Just as in the case of the 238 million dollar "retention grants," WorldCom paid the RBOC Parties' hush money to insure that its emergence from the FCC review process would go smoothly.⁷

⁷ Sec, Fifth Supplement to Petition to Deny Transfer of Licenses, Authorizations and Certifications of WorldCom, Inc , filed November 6, 2003 in WC Docket 02-215

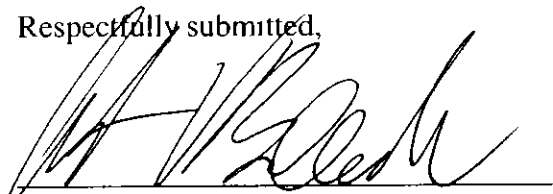
By paying the RBOC Parties to withhold material information, WorldCom has done incalculable damage to the FCC's regulatory process. Taking into account WorldCom past and present conduct, it is reasonable for the Commission to conclude that if WorldCom had not paid the RBOC Parties hush money they would have revealed highly damaging information against WorldCom. *Tendler v. Jaffe*, 203 F.2d 14, 19 (D.C. Cir. 1953) ("The omission by a party to produce relevant and important evidence of which he has knowledge, and which is peculiarly within his control, raises the presumption that if produced the evidence would be unfavorable to his cause."), *International Union, UAW v. National Labor Relations Board*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) ("the failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the . . . document, if brought, would have exposed facts unfavorable to the party") (quoting J. Wigmore, *Evidence* §284, 3rd ed. 1940), *United States v. Robinson*, 233 F.2d 517, 519 (D.C. Cir. 1956) ("[u]nquestionably the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case made by the other side, may, in a proper case, be considered a circumstance against him and may raise presumption that the evidence would not be favorable to his position"); *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948, 3952-53 (Rev. Bd. 1988); *Thornell Barnes v. Illinois Bell Telephone Co.*, 1 FCC 2d 1247, 1274 (Rev. Bd. 1965). These cases are all the more applicable when a licensee, like WorldCom, pays for the silence of opposing parties.

In this case WorldCom paid a substantial monetary amount to insure that the RBOC Parties would not file comments or petitions that could hurt WorldCom's chances of receiving regulatory approval. As a result, WorldCom deprived the FCC of the information it needs to make an informed decision on WorldCom's qualifications to remain an FCC licensee. WorldCom has knowingly and intentionally undermined the FCC's investigative process. The Commission is powerless to strike or disallow the settlement agreements. Having been paid off, the RBOC Parties are not likely to be forthcoming with information. Even in the course of a revocation hearing, it will be difficult and require significant effort, on the part of the Commission and the parties to the proceeding, to discover the information that is readily available to RBOC Parties, but which they are bound by the terms of their agreements not to disclose.

Accordingly, not only should the Commission add an issue to determine whether WorldCom violated Section 1.935 of the Commission's Rules, the FCC should also add an issue to determine whether, in the course of an FCC investigation, WorldCom abused process by inducing the RBOC Parties to withhold material information.

Respectfully submitted,

By.

A handwritten signature in black ink, appearing to read 'Arthur V. Belendiuk', written over a horizontal line.

Arthur V. Belendiuk
Counsel to Margaret F. Snyder

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December 1, 2003

CERTIFICATE OF SERVICE

I, Sherry Schunemann, do hereby certify that a copy of the foregoing "Sixth Supplement to Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc." was mailed by First Class U.S. Mail, postage prepaid or via email, this 1st day of December, 2003, to the following

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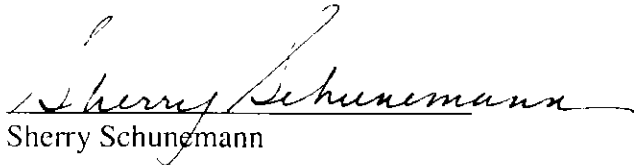
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